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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/718,186

11/19/2003

Noel Rudie

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12/07/2005

MERCHANT & GOULD PC

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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/718,186

Applicant(s)

RUDIE ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 36-41 is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 -14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite in that it is not clear whether the first two contacting steps are required or whether one or both of the first two steps are required as on lines 5-8, and lines 9-11.

Claim 14 is indefinite also in the use of first two contacting steps and then saying "or" as on line 7. It is not known whether the first two contacting steps are required or just one.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwamoto (JP 20011169741) or Iwamoto (JP 7241179) in view of Dunn (4,637,556) or Schaarschmidt (5,233,765).

Iwamoto (JP 20011169741) discloses a process of making an odorless soybean powder having a particle size of from 10-20 microns by treating soaked (0030) soy

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beans (legumes) with steam under vacuum 0006 and drying the soy material with a hot air dryer treating with a classifier (0007, para)

Iwamota ('179) discloses a process of making soybean powder, by shelling the soybeans, classifying and pulverizing the composition (abstract).

Claims 1, 6 –11, and 14 differ from the reference in step of using air from a cooling device or drying apparatus. However, Dunn discloses a process of grinding and classifying (separating) and contacting the milled vegetable (soya bean) with air, which had previously passed through the classifier, and drying the product (col. 1, 5-10, lines 46-70, col. 2, lines 8-15, lines 1-7, 25-27). Anytime air contacts a product some drying occurs. Schaarschmidt discloses a process for dry regeneration of used foundry sand by treating with heated air at a high temperature, recovering the air mixture, filtering the air, heating the mixture and recycling the heated air (col. 6, lines 1-45). It is seen that heating the air at a high temperature would also have dried the product because the air was circulating about. As the principal of re-using air has been shown, it would have been obvious to reuse air from cooling or heating apparatuses in the process of Iwamoto for the known function of reusing air.

Claim 2 further requires dehulling the vegetable and drying at ambient temperature. Iwamoto '741 discloses drying a soybean, dehulling it, subjecting it to vapor pressure, then drying it at 80 C as in claim 2 (0009).

Claim 3 further requires contacting the millable vegetable with steam at from 105 to 120. Iwamoto '741 discloses steaming/evaporation of the soybean. Steaming is generally at least 100 C (para. 0009).

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Iwamoto '741 discloses steaming under pressure for 10 minutes as in claim 4, which is close to 4 to 8 minutes. It would have been within the skill of the ordinary worker to steam for whatever amount of time provided for deodorization. Therefore, it would have been obvious to steam for the right amount of time to provide for deodorization of the product.

The limitations of claim 12 have been disclosed above and are obvious for those reasons. Claim 12 further requires that 70% of the vegetable powder has a particle size of less than 20 microns. It would have been within the skill of the ordinary worker to make a product with the claimed percent of particle size as the reference discloses that the particles can be from 10 to 20 microns. Therefore, it would have been obvious to make a product with the claimed amount of particle sizes.

The limitations of claim 13 have been disclosed above and are obvious for those reasons as have the limitations of claim 15.

Claim 16 further require that the vegetable has a flavor rant of at least 7 and claim 17 that of 8 and 18 that of 3 and claim 19 a rank of 19. However, as the process has been shown in combination, the particular flavor rank would have been inherent. As the process is to removing flavor from the beans, or vegetables, it is seen that it would have been obvious to make a product with certain amounts of beany and nutty flavor by varying the processing conditions. Therefore, it would have been obvious to make a product with a particular rank.

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The further limitations of claims 20 –35 have been disclosed above and are obvious for those reasons. It would have been obvious to use the vegetable powder in various foods as in claims 32-35, for its known function of providing protein.

***Allowable Subject Matter***

Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 36-41 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 12-5-05

*H. Pratt*  
**HELEN PRATT  
PRIMARY EXAMINER**